

ORIGINAL

FEDERAL MARITIME COMMISSION

EXCLUSIVE TUG ARRANGEMENTS
IN PORT CANAVERAL, FLORIDA

Docket No. 02-03

Served: November 15, 2002

**ORDER DENYING CANAVERAL PORT AUTHORITY'S
MOTION TO STAY DISCOVERY**

On August 18, 2002, Canaveral Port Authority ("CPA") filed a motion asking the Administrative Law Judge ("ALJ") in this proceeding to stay discovery pending a Commission decision in a companion case, Docket No. 02-02, Canaveral Port Authority - Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate, in which it is also a party.'

I. BACKGROUND

A. CPA's Motion to Stay Discover-v

CPA argued that the Commission's decision in Docket No. 02-02 could greatly impact this proceeding because, in that proceeding, it had asked that Docket Nos. 02-02 and 02-03 be consolidated; had challenged the Commission's jurisdiction; and questioned the

'The ALJ issued a Discovery Schedule mandating that written discovery and oral depositions be completed no later than September 13, 2002. However, due to a host of motions and requests filed by various parties, discovery in this proceeding is still ongoing.

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

constitutional basis for the Commission's "micromanagement of CPA as an arm of the State of Florida." Motion of Canaveral Port Authority to Stay **Discovery** ("CPA Discovery Motion") at 5. CPA asserted that no one would be disadvantaged or harmed if discovery was stayed, while in contrast, if discovery was not stayed, CPA as well as other recipients of subpoenas for discovery would be unnecessarily burdened, **particularly** if the Commission ultimately issues a decision in Docket No. 02-02 which "dramatically alters the scope and nature of discovery in this case." Id. CPA further argued that the withdrawal of Tugz as an intervenor in that proceeding would have a "dramatic effect on the underlying basis for the Show Cause Order," because CPA and Tugz had reached an agreement that Tugz would no longer seek to have the Commission impose sanctions upon CPA for CPA's conduct giving rise to the proceeding in Docket No. 02-02. CPA Discovery Motion at 5-6.

CPA cited Rule 201(i) of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.201(i),² and suggested that the issues giving rise to this motion are similar to those in Docket No. 99-16, Carolina Marine Handling, Inc. v. South Carolina State Ports Authority, et al., and Docket No. 99-21, South Carolina Maritime Services, Inc. v. South Carolina State Ports Authority, (collectively "SCPA"), where the ALJs issued stays of discovery pending resolution of jurisdictional and constitutional arguments propounded by the South Carolina State Ports Authority ("Ports Authority"), the respondent in both cases.³ CPA

*Rule 201 (i) states in pertinent part that:

Upon a motion by a party or a person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice **requires** to protect such party or person from annoyance, embarrassment, oppression, or undue burden or expense

³Both cases involved complaints alleging that the Ports Authority violated several provisions of the Shipping Act of 1984. The

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

asserts that its motion presents an even greater justification for delaying discovery than did SCPA's. Id. at 6-8.

B. Reply of the Bureau of Enforcement

The Bureau of Enforcement ("BOE") opposed CPA's request on the grounds that CPA's motion was untimely and was also improperly brought before an ALJ in this proceeding based on an argument CPA had made before the Commission in Docket No. 02-02, a separate proceeding. BOE further argued that, in any case, the legal arguments advanced by CPA in Docket No. 02-02 have no merit and that, therefore, CPA's motion to stay discovery pending a decision in Docket No. 02-02 should be denied.

C. ALJ's Decision

The ALJ denied CPA's request, finding that the likelihood that it would prevail in Docket No. 02-02 is not certain, but granted it permission to appeal the denial. Rulings on Dismissal and Discovery Motions at 7-8.

D. CPA's Appeal of ALJ's Denial to Stay Discovery

CPA subsequently filed this appeal asking the Commission to reverse the ALJ's denial of its motion to stay discovery. CPA reiterates that the decision in Docket No. 02-02 will resolve several of the issues raised in this proceeding and contends that it would be wasteful to undergo discovery which may prove to be unnecessary. CPA's Appeal of Denial of Motion to Stay Discovery at 1. In addition, CPA disagrees with the ALJ's opinion that its jurisdictional and constitutional arguments in Docket No. 02-02, challenging the Commission's authority to bring suit against it relating to its assist tug towing franchise,

complaint in Docket No. 99-16 was brought by Carolina Marine Handling Inc., while Docket No. 99-21 was initiated by South Carolina Maritime Services, Inc.

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

are not certain to prevail. CPA argues that, contrary to the ALJ's views, its position is firmly supported by several decisions issued by the Supreme Court, as well as Commission precedent. Id. at 8-9.

E. BOE's Reply to CPA's Appeal

BOE filed a Reply arguing that the ALJ was correct in denying CPA's motion to stay discovery because the constitutional and jurisdictional arguments asserted by CPA in Docket No. 02-02 are without merit; discovery in this proceeding will not be affected by any decision in Docket No. 02-02; and that further delay in discovery would prevent the completion of this proceeding within the deadline established by the Commission and would result in greater financial strain on Petchem, a party in this proceeding. Reply of BOE to CPA's Appeal of Denial at 1.

II. DISCUSSION

Rule 201(i), on its face, grants a presiding officer complete discretion in deciding motions pertaining to discovery. Thus, the question of whether to grant a motion for stay of discovery is discretionary, and requires only a balancing of various competing interests. Landis v. North American Co., 299 U.S. 248, (1936). In this regard, the movant must first "make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else."⁴ Id.

In support of its motion, CPA first argues that Docket Nos. 02-

⁴The Supreme Court stated that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Landis, 299 U.S. at 255.

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

02 and 02-03 are “inextricably linked” and that the pending decision in Docket No. 02-02 will resolve many of the issues in this proceeding. Concededly, some, but not all, of the parties in both proceedings are the same, and both proceedings address the assist tug towing franchise system ~~in~~ Port Canaveral. Other than that, we do not see how Docket No. 02-02, which involves a purely legal issue as to whether CPA violated section 1 O(b) (10) of the Shipping Act by its refusal to consider the ~~application~~ for a tug and towing franchise filed by Tugz (a fact not disputed), ~~is~~ so linked to, that it cannot be separated from, Docket No. 02-03 -- an investigation as to whether CPA violated several ~~sections~~ of the Shipping Act of 1984, which involves both factual and legal issues and requires extensive discovery. We believe, to the contrary, that the two cases involve distinct issues and are not as intertwined as CPA would have us believe. As part of this general argument, CPA points out that the Commission’s decision in Docket No. 02-02 could greatly impact this proceeding because in that htigauon it had asked that both proceedings be consolidated. The Commission has since denied CPA’s request to consohdate, finding that maintaining the cases as two distinct proceedings is the best way to manage the issues. That argument is, therefore, moot.⁵

Equally moot is CPA’s argument that a stay be issued on the basis of Tugz’s withdrawal as an intervenor in Docket No. 02-02. CPA asserts that Tugz’s withdrawal, along with an agreement by Tugz that Tugz would no longer seek to have the Commission impose sanctions upon CPA, “will have a major impact on both Docket No. 02-02 and 02-03.” Tugz is ~~still~~ a party in Docket No. 02-02 and has not indicated to the Commission that it no longer seeks to have sanctions imposed on CPA.⁶ Moreover, Docket No. 02-02 is not a complaint case subject to

⁵See Order Denying Canaveral Port Authority’s Petition to Consolidate at 7.

⁶To the contrary, in its Motion to Dismiss and For Protection of Intervenor Tugz International L.L.C., (“Motion to Dismiss”) where Tugz sought and was granted permission to be dismissed as an

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

the desires of a private party, but rather a show cause proceeding in which the Commission directed CPA to show cause why it has not violated the Shipping Act. Whether Tugz decides to not “seek to have the Commission impose sanctions” is irrelevant to the disposal of the proceeding.

CPA also contends that it advanced jurisdictional and constitutional arguments in Docket No. 02-02 as to why the Commission does not have authority to question its assist tug franchise system and should dismiss the proceeding. CPA and BOE have vigorously debated their opposing positions on this issue, but, since these arguments were propounded in Docket No. 02-02, we believe that Docket No. 02-02 is the appropriate forum in which to determine the merits of those arguments.

More appropriate is the issue of whether the Commission should hold this proceeding in abeyance pending a decision on the merits of CPA’s challenge in Docket No. 02-02. CPA cites to SCPA⁷ as precedent supporting its request. We do not believe, however, that SCPA is proper precedent because the motion to stay discovery in that proceeding was made based on completely different facts than those at issue ~~here~~. Moreover, SCPA involved the novel issue of whether the Ports Authority’s Eleventh Amendment right of sovereign immunity from complaints brought by private litigants in a judicial proceeding could be invoked against the Commission, an adjudicatory tribunal. Because this was an issue never previously determined, it behooved the Commission to hold that proceeding in abeyance pending a court determination on that issue.

Intervenor in this proceeding, Tugz stated that it “stands by its Reply Affidavit filed. . . under Docket No. 02-02, and believes that. . . CPA should be severely sanctioned for its flagrant disregard of the Shipping Act of 1984” See Motion to Dismiss at 1-2.

‘Discussed supra, at pages 2-3.

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

More importantly, unlike in SCPA, where the movant showed it would be irreparably harmed by loss of its constitutional right of sovereign immunity if forced to proceed before the Commission despite having such immunity, CPA has made no showing of irreparable harm. Citing Rule 201 (i), CPA argues that the Commission may issue an order, in its discretion, to protect a party from, inter alia, oppression, undue burden or expense, but it does not explain how proceeding with discovery would cause it to suffer any of these hardships. As CPA's Motion to Consolidate has been denied and Tugz is still a party to Docket No. 02-02, the burden of being forced to proceed with discovery in this proceeding when there potentially could be developments in Docket No. 02-02 that impact such discovery no longer exists. In addition, prior to filing this motion on August 13, CPA had already begun participating in the discovery process *without* complaint. Therefore, it would not be equitable for CPA now to seek reprieve from a process which it has used to its advantage to obtain discovery materials from the other parties.

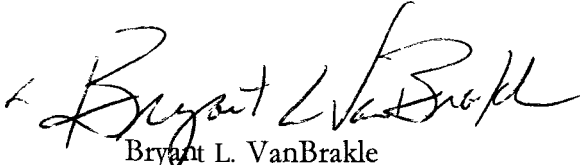
Moreover, we are concerned that granting a stay of discovery may be harmful to Petchem because the costs of participating in this proceeding are considerable and increase each time a deadline is extended. As a result of this potential harm to Petchem, CPA has an even greater burden to justify the granting of this extraordinary remedy.⁸ We do not believe that it has met this burden. Because CPA has not proven that it is likely to suffer harm if the Commission does not grant its Motion to Stay, and because all parties to this litigation and the public in general would be better served by an expeditious resolution of this proceeding, we will deny CPA's Motion to Stay Discovery.

⁸See Landis at 255, stating that a movant must make out a clear case of hardship or inequity if there is even a fair chance that granting a stay may cause harm to another.

EXCLUSIVE TUG ARRANGEMENTS IN PORT CANAVERAL

THEREFORE, IT IS ORDERED, That Canaveral Port Authority's motion to stay discovery in this proceeding is denied.

By the Commission.


Bryant L. VanBrakle
Secretary